(1) (3)

CHSL

IN THE HIGH COURT OF JUDICATURE AT BILASPUR,(C.G.)

Miscellaneous Appeal No. 885 /2003

Division Bench

APPELLANTS: CLAIMANTS

1) Smt. Pirbi W/o. Shekh Ajimuddin
aged about 52 yrs., H/w.

2) Shekh Ajimuddin @ Mannu Khan
S/o. Shekh Rahamuddin
Aged about 55 Yer.
Both are R/o. Near Kallu Gairaj
Maudhapara Raipur (C.G.)

VERSUS

RESPONDENTS NON-APPLICANTS :

1) Tansen Yadav S/o. Channuram Yadav
Aged about 29 Yer., Driver
R/o. Vill -Khakhuli, P.S. - Daundilohara
Distt. – Rajnandgaon (C.G.), Present
address – Jindal Still Mandir hasod
Raipur

2) Manjeet Singh Khanuja S/o. Ranjeet
Singh
Truch Owner, R/o. Shyam Nagar,
Raipur (C.G.)

3) The National Insurance Co. Ltd.
Through Divisional Manager, Divisional
Office, Mobin Mahal, G.E. Road,
Raipur (C.G.)

P. R. No. 21/2/03
Presented by Shri S.K. Verma
dated 19/9/03

Miscellaneous Appeal under section 173 OF Motor Vehicles Act 1988

(13)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

(Division Bench)

Miscellaneous Appeal No.885 of 2003

Smt. Pirbi and another

- Versus -

Tansen Yadav and others

ORDER FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge
29.7.2004

HON'BLE THE CHIEF JUSTICE

Sd/-
Chief Justice

1.8.2004

POST FOR ORDER ON 2nd AUGUST, 2004

Sd/-
L.C.BHADOO
Judge
30.7.2004

(14)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

(Division Bench)

CORAM: -

HON'BLE MR. A.S.V. MOORTHY, C.J.

AND HON'BLE MR. L.C. BHADOO, J.

Miscellaneous Appeal No.885 of 2003

Smt. Pirbi and another

- Versus -

Tansen Yadav and others

Present: -

Mr. Satish Chandra Verma, Advocate: For the appellants.

ORDER

(Passed on 22nd August, 2004)

The following order of the Court was passed by *L.C. Bhadoo, J*: -

1. Claimants/appellants Smt. Pirbi and Sheikh Ajimuddin @ Mannu Khan have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988, being aggrieved by the award dated 21.7.2003 passed by the 1st Additional Motor Accident Claims Tribunal, Raipur, in Claim Case No.168/2002, whereby the learned Tribunal rejected the claim of the claimants on the ground that they have not been able to prove that deceased Kamaluddin was their adopted son and they are the legal heirs of Late Kamaluddin.

2. Brief facts leading to filing of this appeal are that on 10.3.2002 at about 10.30 a.m., the deceased was going in a rickshaw from Chedikhedi to Raipur and by the time the rickshaw reached in front of the agricultural hostel of Village: Jora, all of a sudden one dumper bearing registration No.MPS-6089 came from behind from Mandir Hasaud side of which respondent No.1 was the driver and he was driving the vehicle on a high speed and in negligent manner. The said dumper dashed against the rickshaw from behind as a result of which Kamaluddin (since deceased) and rickshaw puller Sheikh Anwar received grievous and simple injuries. The report of the same was lodged in Telibandha Police Station. The injured was

taken to Ambedkar Hospital from where he was shifted to MMI Hospital, Raipur. Ultimately, Kamaluddin died on 14.4.2002 on account of the injuries sustained by him in the said accident. The present appellants/claimants filed a claim petition before the 2nd Additional Motor Accident Claims Tribunal, Raipur, claiming Rs.13,10,000/- on the ground that deceased Kamaluddin was their adopted son and he was earning around about Rs.5,000/- per month and he was giving them Rs.5,000/- per month for their maintenance.

3. Return was filed on behalf of the respondents in which they denied that the accident took place on account of the rash and negligent driving of respondent No.1. They further denied that deceased Kamaluddin was the adopted son of the claimants and further mentioned that the claimants are not entitled for any claim. Based on the pleadings of the parties five issues were framed and parties had adduced their evidence. After hearing counsel for the parties, learned 1st Tribunal reached the conclusion that respondent No.1 was driving the dumper rashly and negligently as a result of which the dumper dashed against the rickshaw, Kamaluddin received grievous and simple injuries and he died on account of that. However, while deciding issue No.3, the learned Tribunal held that the claimants have failed to prove that the deceased was their adopted son and they are the legal heirs of Kamaluddin.

4. We have heard the learned counsel for the appellants.

5. Learned counsel for the appellants argued that the finding of the learned Tribunal is perverse as the same is contrary to the evidence available on record. As per the evidence of AW-1 Sheikh Ajimuddin @ Mannu Khan and AW-2 Shiraj, it is proved that deceased Kamaluddin was the adopted son of the appellants/claimants.

6. Having heard the learned counsel for the appellants, we have gone through the evidence. In the examination-in-chief, appellant No.2 Sheikh Ajimuddin @ Mannu Khan (AW-1) stated that as they were issue-less and the parents of Kamaluddin had already died and there was no relative of Kamaluddin, therefore, they brought up Kamaluddin since his age was 6-7 years. He further stated that since they were issue-less, on humanitarian ground they brought up Kamaluddin and took him in adoption on the advise of relatives

and peoples of the vicinity. He has further stated that Kamaluddin was 35 years of age and he was earning Rs.5,000/- per month. In the cross-examination, this witness has stated that Kamaluddin was not his natural son, but he was his adopted son and further stated that Kamaluddin was not given in adoption by any one and he does not know as to whether the adoption is permissible under Muslim law. He has further stated that father's name of Kamaluddin in the post-mortem report (Ex.P-3 & Ex.P-4) and in receipt (Ex.P-28) was written as Badurddin.

7. Therefore, in view of the above evidence, we are of the opinion that the learned Tribunal has rightly held that the claimants have failed to prove that Kamaluddin was adopted by them and they were his legal heirs and dependent upon him. Even in the record, i.e. post-mortem report (Ex.P-3 & Ex.P-4) and receipt (Ex.P-28), father's name of Kamaluddin was written as Badruddin who was the natural father of Kamaluddin. In these documents, it was nowhere mentioned that the adopted father of Kamaluddin is Sheikh Ajimuddin @ Mannu Khan. Moreover, claimant No.2 has not been able to prove that under the Mohammedan law adoption is permissible. Apart from his evidence, no other evidence has been produced in order to prove that Kamaluddin was given in adoption by some persons and taken by the claimants, as the parents of Kamaluddin had already died. Moreover, as per the evidence of claimant No.2, at the time of accident Kamaluddin was of the age of 35 years, whereas claimant No.2 was of 55 years of age. Therefore, looking to the age difference, it cannot be believed that the claimants took the deceased in adoption.

8. In the circumstances, we are of the considered opinion that the finding of the Tribunal that the claimants have failed to prove that deceased Kamaluddin was taken in adoption by them is correct and we do not find any illegality or infirmity in the above finding. We have no reason to disturb the finding of the Tribunal.

9. In the result, the appeal of the appellants fails and the same is dismissed in limine at the admission stage itself.

Sd/-
Chief Justice

Sd/-
L.C.BHADOO
Judge
30.8.2004

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